

## Special Issue: The Hidden History of Crime, Corruption, and States

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### The Hidden History of Crime, Corruption, and States: An Introduction

*Without justice, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity.*

Augustine of Hippo, *City of God*, Book IV, Chapter 4.

Over a quarter of a century ago, the late Charles Tilly, echoing Augustine, offered the fertile insight that "banditry, piracy, gangland rivalry, policing, and war-making all belong on the same continuum."<sup>1</sup> He observed that existing historical literature, by stressing sanctioned aspects of states, like bureaucracies, has tended to overlook the significance of illegal practices in the creation of modern states. Professor Tilly gave generous attention and advice for this project shortly before his death. In gratitude for his fruitful participation we wish to dedicate this Forum on the political economy of crime to him.

As an historical sociologist, Tilly took for granted the connection between social, economic and political history. Historians of the sixties and seventies also turned to closer studies of non-political society. Given the spirit of those rebellious times, marginal groups like outcasts and lawbreakers tended to be romanticized, as in Eric Hobsbawm's *Bandits* and Albion's *Fatal Tree* by E.P. Thompson, Douglas Hay and others. The move to cultural history of the eighties and nineties offered a less overtly materialist perspective on the past, but in its turn is now being questioned as perhaps having strayed too far from social history. Geoff Eley in *A Crooked Line: From Cultural History to the History of Society* concluded his historiographical review by pleading for a basic pluralism with confidence in "the possibility of grasping society as a whole, of theorizing its bases of cohesion and instability and of analyzing its forms of motion."<sup>2</sup> The book engaged a lively historiographical

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discussion in the *American Historical Review* about the degree to which the linguistic turn, postmodernism and post-structuralism might have run their course and for the need to reevaluate more positively the perspectives that social history offers. One of the discussants, William H. Sewell, Jr., proposed that we "recognize how our own efforts to rethink history are conditioned by contemporary transformations in global capitalism."<sup>3</sup>

That we historians are ourselves the product of our times is an important reminder about what themes need our attention. These days, there are almost daily headlines about corruption in governments, international trafficking of goods and people, and financial trickery. Piracy has returned dramatically in the Indian Ocean off Somalia. Drug traffickers supply both sides of the civil war in Colombia as well as customers in North America and Europe. Purveyors of sex workers for profit and other laborers bring people from poor countries to serve illegally in richer ones. "Creative accounting" by financial institutions has bilked tens of thousands of people of their pensions, savings and homes. The historical question becomes unavoidable: how new is all this? How important is and was it? What is and has been the political and social heft of crime? Has it affected law-making itself? Today's huge changes in production, distribution, finance, and all the social relations that become involved with these as well as the challenges to state sovereignty as it has historically evolved frames this forum on "The Hidden History of Crime, Corruption and States."

When not romanticized, crime has been studied as social deviance focused on individual behaviors rather than on commercial crime or crime/state relations, with the term "outlaw" suggesting a metaphorical wall between those inside and those outside the law. By contrast, here we see law to be more permeable, allowing questionable practices to have been socially and politically integrated into various societies in different times and places. After all, much of law pertains to property, and property profoundly affects social relations which in their evolution tend to spill over the frontiers of codified and customary law. For much of history-writing, the relationship of crime and corruption to state and society has been resolutely ignored.

The authors in this Forum offer research that sheds light on some of these questions. They challenge the Weberian idea that capitalism requires a rational and predictable legal system, enforced by state monopoly of violence. Instead, they look at the convergence of legal and illegal practices in various forms, locations and eras of polities—premodern European city-states, a North American colony, the modern nation-state of Japan, and the supra-national European Union. Together, they evoke questions about the historicity of modern states and of their relationship to irregular economic practices. The first two, by Mary Lindemann and Douglas Burgess, look at changing meanings of corruption and piracy in the dynamic political economy of the seventeenth century, an era in which the tectonic plates of private/public power shifted toward the social and political earthquakes of the eighteenth century. The third, by Eiko Maruko Siniawer, describes a form of nation-building that clearly evokes Tilly's notion of a continuum between gangsterism and state formation. The fourth, by Beatrice Hibou, brings us to the present when transnational crime both challenges and engages existing states by its involvement with the formal economy.

Here again, Charles Tilly pointed out a path. In an essay provocatively titled "Welcome to the Seventeenth Century," he noted that the predominance

of relatively centralized, territorially delimited states cooperating with firms controlling fixed capital for production and distribution were historically exceptional. Prior networks of trust that people depended on to shield them from life's risks, like those of kinship, neighborhood, shared religion, craft membership, patron-client chains, credit networks, mutual aid societies, inexorably gave way to control by these more powerful state and corporate actors from the eighteenth to the nineteenth centuries. He posited that these relationships may now be mutating once more, such that "world-spanning capital markets are gaining autonomy with respect to firms and states" while emerging new trust networks, including those of mafias, drug traders and clandestine currency dealers, may well contribute to undermining state authority.<sup>4</sup>

In this forum, Mary Lindemann opens the discussion by showing the malleability of the notion of corruption in early modern Europe. In a time when public and private affairs intersected and leading elites expected to govern, a notion of corruption nevertheless existed as a moral abuse, accusations of which could be used politically. Corruption was not an unexamined practice in pre-modern polities, as modern historians thought. Rather, charges of corruption could be mobilized for political change. Her comparison of the seventeenth century city-states of Amsterdam and Hamburg shows that such charges could either simply be used to force personnel changes while leaving a system intact or else aim to radically reform the very structures of government that enabled corruption. As both city-states were important trading and banking centers that were also creditors to princes, countries and entrepreneurs, the question of who held power legitimately could lead to civil strife and eventually bloodshed.

Douglas Burgess examines the political uses of adaptable legal definitions in a different early modern polity: the colony of Rhode Island. Pirate plunder became important to Rhode Island's economic development, which in turn contributed to the colony's political transformation. Challenging the Crown's protection of English merchants who lost revenue to smuggled goods, the colonial governors in the seventeenth century asserted and transformed admiralty jurisdiction—the law of all things related to maritime commerce—to define piracy in a way that suited the colony's own commercial purposes and the sense of its rights. Thus, the New World's collusion with the Old World's "crime" of piracy began the long process of systemic separation that ended with the American War of Independence.

In an example of modern nation-state formation two centuries later, Eiko Maruko Siniawer describes how in Japan Max Weber's ideal type of the state which has legitimate monopoly over the means of coercion was compromised by networks of state complicity with criminal wielders of violence. The postwar Japanese government, by instrumentalizing for its own purposes the competing means of coercion of the Yakuza, a kind of mafia, could claim plausible deniability in repressing opposition from trade unions and political parties. With the maturation of capitalist relations under putatively democratic governance, such covert favoritism of business interests became an important part of Japanese economic development in the twentieth century. As in Lindemann's case for seventeenth century city-states, reformers restricted themselves to targeting individual transgressors but not state structures themselves, which maintained a façade of legal propriety.

Beatrice Hibou unravels the murky web of legal and illegal transactions within the supra-national polity of the European Union focusing on the

Mediterranean socio-economic region, where trafficking in goods and people, money laundering, and counterfeiting are an integral part of the economy, even though state agencies and politicians officially condemn these activities. State actors north of the Mediterranean publicly fight crime seen as largely originating in North Africa, yet are often secret partners in breaches of the law that benefit their economies, such as the trafficking in human labor. Furthermore, the states' "war on crime" allows increased surveillance of citizens, which facilitates crack-downs, thus strengthening the repressive and normative function of states.

Indeed, historical interest in the political valence of crime should respond to the fact that global crime has exploded in the last twenty years. Manuel Castells states flatly: "The state is not only being bypassed from outside by organized crime. It is disintegrating from within." He explains: "The question is not whether our societies will be able to eliminate the criminal networks, but rather, whether criminal networks will not end up controlling a substantial share of our economy, of our institutions, and of our everyday life."<sup>5</sup>

How such a transformation may be already occurring has been traced in detail by two German sociologists, Elmar Altvater and Birgit Mahnkopf. They argue that the integration of national economies into global production and markets drives out older state norms of labor laws and that cheaper global labor forces more people into informal work and the shadow world of criminality.<sup>6</sup> The vast global chain of production and distribution, linking raw materials to consumer goods, is ever more exposed to organized crime.<sup>7</sup> The rise in importance of financial markets has diverted some capital from production to rent-seeking and speculation, which reduces state revenues and therefore social services, driving an increasingly impoverished part of the population to crime.<sup>8</sup> Global deregulation of markets has involved respectable big banks in financial transactions for drugs, sex, oil, etc. as it has local notaries, lawyers, financial services, travel bureaus, hotels, jewelers, casinos. Money laundering—the layering of illegal with legal money—is the formalization of informal money and, because it recognizes no boundary rules, threatens the sovereignty of the national state over its currency.<sup>9</sup> If one includes abusive transfer pricing of commodities, tax evasion and dummy corporations, perhaps half the world's money passes through systems designed to handle illicit proceeds.<sup>10</sup> Finally, the neoliberal thrust toward privatization of previously public goods, especially in newly transitional states such as Russia and those of Eastern Europe, creates opportunities for corruption and may cause weak states to dissolve entirely.<sup>11</sup>

Under these circumstances, law itself may mutate into its own form of criminality, as suggested by Antoine Garapon's "The Imaginary Pirate of Globalization," in which he compares eighteenth century laws against piracy to present day attempts to control predation on the "seas" of de-territorialized networks of trafficking, money laundering and terrorism. He observes that currently globalized crime is being combated in part by a kind of worldwide jurisdiction in which legal institutions imitate pirates in their tracking and capturing of targets, even at the cost of breaking existing national laws protecting privacy and rights. Thus, suspicion and prevention of crime may trump evidential proof. Intensified surveillance creates secret agents who are "like latter-day privateers, ... using methods that lie outside the bounds of legality." Finally, states become outlaws on behalf of law.<sup>12</sup> Hibou's essay takes this perspective into consideration,

suggesting that this game around laws allows states to redeploy their interventions in ways that conform with the rules of neoliberal globalization.

While anthropologists, sociologists, and economists have done valuable work on illegal practices at the intersection of civil society and the state, historians have mainly focused on formal structures and institutions, and have regarded the definition, incidence and impact of crime as marginal or anecdotal phenomena. But the ways in which wealth and the power that accrues to it are accumulated require closer attention to the permeable frontier of law and to the pressures on it for change.

There are three understandable reasons for this omission to date. The first is the obvious one that much of written history has served national purpose. But aside from the ideological, there are also methodological reasons. One has to do with sources and the other with definitions. On the first, it is certainly the case that illicit practices leave few trails. Yet, in spite of themselves, they often do. The authors in this Forum have found enough evidence to track agents and actions so as to make plausible claims about their political effects. The question of definition can, however, be slippery, as Lindemann's and Burgess's essays show. Corruption was not an exact notion in Europe in the sixteenth to eighteenth centuries, when traditional patronage relations obviated a clear distinction between private and public power and service. Modern states do make that distinction by law, but since states are historical formations themselves, so are their laws. Michel Foucault offered the view that the state has no essence, but is a function of changing practices of government reflecting changes in power relations.<sup>13</sup> Saskia Sassen, fusing Marx and Foucault, has elaborated on Foucault's notion of the micro-processes of power by analyzing components in the formation of the early modern national state that became "assembled" into the formal mechanisms that legitimate some claims and render others illegitimate.<sup>14</sup> British criminologist John Lea takes this further by asserting that "crime has no ontological reality. Criminalization is one of the many ways of constructing social reality."<sup>15</sup> Finally, and most cynically, a neo-Clausewitzian definition has been offered: "Crime is the continuation of business by other means."<sup>16</sup>

These difficulties suggest that rather than agonize over fluid definitions, historians might do better simply to examine predatory and injurious practices commonly recognized as criminal, such as the violence described in Siniawer's essay.<sup>17</sup> We can then trace how historical states have negotiated the boundaries between these practices and their own attempts to fix legal norms.<sup>18</sup> An approach that explores these contested boundaries in the ongoing process of making, unmaking, and revising sovereign claims could challenge the historical tendency to reify states and would unmask the hitherto largely absent presence of the "surreptitious politics" of the shadowy power of crime.<sup>19</sup>

Historians also can contribute temporal and comparative perspectives sadly lacking in discussions of contemporary state behavior. Indeed, Lindemann's work about the pre-modern overlap between public and private power raises the question of today's revolving door between business and the U.S. government as either facilitating use of experts' skills or enabling individual malfeasance. But while the relationship of crime and the state generally has been an under-researched theme among historians, it is gaining ground as a "comparatively young branch of historical study" that has benefited from anthropological and sociological work.<sup>20</sup> With these diverse pilot studies we hope to encourage more

historical research. Other examples in a forthcoming volume will further elucidate how premodern states have morphed into modern ones and how their relationships to both the sunlit and darker sides of civil society have evolved along with the ways in which wealth, however accumulated, has wielded power over the shifting shapes of law.

My hypothesis for further research is that the political history of capitalism had a dual form with regard to the state and its laws. On the one hand, there exists a well-documented visible evolution of legal institutions regarding the disposition of property. On the other hand, we now see a hitherto less acknowledged underbelly of capital accumulation in breach of such legal institutions. The role of the state as mediator between these two forms and its sometime complicity with lawbreakers and, conversely, the role of crime in the formation, maintenance and dissolution of states suggests a dialectic of power whose importance is becoming increasingly clear in our own time.

## Endnotes

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